

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division

FIDELITY AND DEPOSIT COMPANY)
OF MARYLAND)
Plaintiff,)
v.) Civil Action No. JFM 03 CV 0266
TELMARK, LLC et al.,)
Defendants.)

)

DECLARATION OF DENNIS R. HAYDEN

I, Dennis R. Hayden, make the following declaration pursuant to and in conformance with 28 U.S.C. § 1746:

1. I am an employee of Zurich American Insurance Company (“Zurich”), formerly Fidelity and Deposit Company of Maryland (“F&D”), Plaintiff in the above-captioned action, and have been so employed since 1986. I currently hold the position of Managing Counsel for Commercial Surety Claims.

2. I have conducted a preliminary investigation of the facts underlying the Complaint filed in this action, and make this declaration based on that investigation.

3. I have examined the document entitled Agreement of Indemnity, which was made and entered into effective April 10, 1986 (“1986 Agreement”).

4. I am familiar with the normal and customary procedures F&D employed in 1986 to prepare and enter into agreements such as the 1986 Agreement. F&D’s customary practice at that time was to prepare the document for signature of the other party, and after obtaining the other party’s signature, to affix a signature of an officer of F&D.

5. Friend R. Nagle, Vice-President of F&D, signed the 1986 Agreement as Vice-President of F&D. Mr. Nagle's signature is not notarized or dated. In 1986, Mr. Nagle's F&D office was in Baltimore. Mr. Nagle is deceased.

6. Robert L. Meyer, former Assistant Manager of F&D, was involved with the Agway account at the time the 1986 Agreement was made and signed the 1986 Agreement as Assistant Secretary of F&D. Mr. Meyer's signature is not notarized or dated. In 1986, Mr. Meyer's F&D office was in Baltimore. Mr. Meyer would have personal knowledge of certain events and the intent of the parties regarding aspects of the 1986 Agreement. Mr. Meyer is now retired from F&D and currently resides in Ellicott City, Maryland.

7. Joseph C. McHugh, former Assistant Vice President of F&D, was involved with the Agway account at the time the 1986 Agreement was made. In 1986, Mr. McHugh's office was in Baltimore. Mr. McHugh would have personal knowledge of certain events and the intent of the parties regarding aspects of the 1986 Agreement. Mr. McHugh is now retired from F&D and currently resides in the Baltimore area.

8. Dennis Palmer, former Assistant Vice President of F&D, now works as a consultant for Zurich, and was involved with the Agway account at the time the 1986 Agreement was made. In 1986, Mr. Palmer's office was in Baltimore. Mr. Palmer would be able to testify as to certain events and the intent of the parties regarding aspects of the 1986 Agreement. Mr. Palmer currently lives in the Baltimore area.

9. Paul Rogers is currently Head of Zurich's Surety Department in Baltimore. Mr. Rogers is familiar with the Agway account and has knowledge of the past and present underwriting policies and procedures used in the Surety Department. Mr. Rogers currently lives in the Baltimore area.

10. Theodore Martinez is currently Head of Zurich's Commercial Surety Underwriting in Zurich's Surety Department in Baltimore. Mr. Martinez is familiar with the Agway account and has knowledge of the past and present commercial underwriting policies and procedures used in the Surety Department. Mr. Martinez currently lives in the Baltimore area.

11. Eric Barnes is currently Senior Commercial Surety Underwriter in Zurich's Surety Department in Baltimore. Mr. Barnes is familiar with the Agway account and has knowledge of the past and present commercial underwriting policies and procedures used in the Surety Department. Mr. Barnes currently lives in the Baltimore area.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 7, 2003.



Dennis R. Hayden